

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 163 of 2001

Old F.A.F.O. No. 415 of 1993

1. State of U.P. through Collector, Nainital.
2. State of U.P. through Police Up Mahanirikshak,
U.P. Police Mukhyalaya, Allahabad under care
Of Police Adhikshak Vishesh Shakha Abhisuchana
Vibhag, U.P. Haldwani, District Nainital.

...Appellants.

Versus

1. Sri Jawahar Lal father of the deceased aged 48 years,
 2. Smt. Santosh mother of the deceased, aged 38 years,
 3. Suresh Chandra brother of the deceased aged 26 years
 4. Ramesh Chandra aged about 19 yrs, brother of deceased.
 5. Anand Ballabh, aged 14 yrs, minor brother of the deceased,
but now having attained majority.
 6. Brijnand aged 12 years, minor but now having attained majority,
Brother of the deceased.
 7. Km. Sabitri aged 11 years, minor but now having attained
majority, sister of the deceased.
- All residents of Chak Baheri (Samgaon), P.O. Bhimtal,
District Nainital.

.... Respondents.

Sri Nand Prasad, learned Standing Counsel for the appellants.

Sri G.B.Pande, Advocate, Learned Counsel for the respondent No.1.

Date April 19, 2006.

P.C. Hon'ble B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 (*for short the Act*) is directed against the judgment and award dated 14-12-1992, passed by the Motor Accident Claims Tribunal/IV Addl.District Judge Nainital (*in short the Tribunal*) in Motor Accident Claim Petition No. 423 of 1989, Jawahar Lal and others V. State of U.P. and another, whereby compensation of Rs. 60,000/- has been awarded in favour of the claimant nos. 1, 2, 5, 6 and 7 as against the appellants.

Relevant facts of the case are that a claim petition was filed for compensation of Rs. Five lacs by the claimants before the Tribunal in respect of death of Mahesh Chandra on 28-7-1989, involving car no. UHE 8835 Haldwani-Bhimtal motor road due to rash and negligent driving by the driver of the car. It was alleged

that the vehicle belonged to the police department. The deceased was aged 19 years earning Rs. 1500/- per month and a qualified mechanic, who was engaged to find fault in the vehicle.

The opposite parties-appellants filed its written statement but have not challenged the fact that deceased Mahesh Chandra died in the accident in question. It has been denied that the driver of the vehicle was rash and negligent, rather it has been asserted that due to failure of steering the accident occurred. The car was being driven as per instructions of the owners of Modern Automobiles Haldwani, therefore, the compensation, if any, was payable by the Modern Automobiles. The claimants were not dependent upon the deceased.

On the pleadings of the parties, the learned Tribunal framed two issues in the case. Issue No.1 was framed on the point of rash and negligent driving and Issue No. 2 related to relief. After recording the evidence led by the parties and considering the same, the learned Tribunal came to the conclusion that the accident in question was caused due to rash and negligent driving by the driver of the said car. On Issue No. 2, the learned Tribunal after examining the relevant aspect regarding dependency and the income of the deceased has held that claimant nos. 1, 2, 5, 6 and 7, who are father, mother and minor brothers and sister of the deceased, were entitled to the compensation. Regarding income of the deceased, the Tribunal has held that the deceased Mahesh Chandra was a qualified mechanic and he might have been earning Rs. 1,000/- per month. Out of this income, the learned Tribunal has deducted Rs. 700/- towards personal expenses of the deceased and assessed monthly dependency at Rs. 300/-, i.e. Rs. 3,600/- per annum and after applying multiplier of 14 on the basis of the estimated period of dependency, i.e. 14 years, worked out loss of dependency as Rs. 50,000/- and in addition, allowed Rs. 10,000/- towards mental agony

suffered by the claimants. Accordingly, the claim petition was decreed for compensation of Rs. 60,000/-.

The appeal has been preferred by the State mainly on the ground that the finding of the learned Tribunal on the point of negligence was not based on evidence on record. The finding of the tribunal has also been challenged on the point of dependency of the claimants as well as income of the deceased.

I have heard learned counsel for the parties and perused the entire evidence on record including the lower court record.

So far as the issue of rash and negligent driving of the driver of the car is concerned, the learned Tribunal has scrutinised the evidence led by the parties. It is admitted to the appellant that the deceased Mahesh Chandra was employed as mechanic in the Modern Automobiles. In their written statements, it has also been asserted tht the deceased was sitting inside the vehicle at the time of accident. They have admitted the fact that the deceased was taken in the car, which was running for trial. It is the positive case of the appellants that the accident occurred due to failure of steering. On this point, the appellants have examined Ganga Prasad Tewari, Foreman as D.W.2. D.W.2 has made technical inspection of the vehicle on 29-7-89. This witness has stated that it can be presumed that accident occurred due to failure of steering. His opinion is based only on estimation. In his cross-examination, he has stated that he cannot testify whether the steering of the car went out of order before the accident or subsequent to it. In any view of the matter, it can safely be drawn that it is the duty of the driver to be careful and cautious. The car was being driven on the hill roads. Had the driver been careful and vigilant at the time of accident, the accident could have been avoided. On the other hand, claimants have examined P.W.2 Prakash Lal, who was employed as mechanic in the Modern Automobiles. In his examination in chief, he has

clearly deposed that the car in question was brought for repairs and he inspected the car and removed the defects. Thus the evidence on the point of negligence led by the parties goes against the case of the appellants and the learned Tribunal was justified in holding that the accident in question was caused due to the negligence on the part of the driver of the ill-fated car belonging to the appellants.

So far as the dependency and income of the deceased are concerned, it is admitted to the appellants that the deceased was working as mechanic. Claimants have mentioned that the deceased was earning Rs. 1,500/- per month as salary. P.W.2 Prakash Lal has deposed that deceased was getting the said salary. However, no documentary evidence was filed on record in this regard. The Tribunal has assessed the monthly income of the deceased as Rs. 1,000/- on the ground that he was a qualified mechanic. The appellant has not led any evidence that the income of the deceased was less than Rs. 1,000/- per month. In my view, the Tribunal has not committed any infirmity or illegality in assessing the income of the deceased. Out of this income, the Tribunal has deducted major portion of his salary towards personal expenses, i.e. Rs. 700/- per month and has taken into account Rs. 300/- per month as dependency towards the claimants. The deceased was unmarried. It is but natural that the deceased would have been assisting financially to his parents and minor brothers and sister. The learned Tribunal has considered this aspect in its judgment and it came to the conclusion that only claimants nos. 1,2, 5, 6 and 7 are entitled to get compensation.

Regarding quantum of compensation, the amount of Rs. 60,000/- as compensation in the instant case cannot be said to be excessive at all.

No other point was urged or argued before me in this appeal.

The appeal preferred by the State is devoid of merit and is liable to be dismissed. No order as to costs.

The amount in deposit with this Court, if any, be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants no. 1, 2, 5, 6 and 7.

(B.S.Verma, J.)

RCP